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EXAMINER  
URBAN, E

ART UNIT PAPER NUMBER

2611

DATE MAILED: 09/08/95

26M2/0908  
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This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 5/22/95 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s),        days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.  | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.       |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____   |

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1-24 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2. ☐ Claims \_\_\_\_\_ have been cancelled.

3. ☒ Claims 23-24 are allowed.

4. ☒ Claims 1-22 are rejected.

5. ☐ Claims \_\_\_\_\_ are objected to.

6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

7. ☐ This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

**EXAMINER'S ACTION**

Art Unit: 2611

1. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

2. Claims 1-2, 4, 9-14, 16 and 21-22 are rejected under 35 U.S.C. § 103 as being unpatentable over Olson in view of Cunningham et al.

Olson discloses a radio frequency management system for reallocation of radio spectrum comprising frequency reallocating means for reassign temporarily radio spectrum from a wireless communication network and means 302 for causing portable radio control signals to change their operating frequency and protocol to permit the devices to communicate over the temporarily assigned radio spectrum. Also disclosed by the portable devices is a frequency agile radio transceiver 232 for operating between different networks, a "protocol agile" operating circuit 302, 307, 308 for operating the frequency agile transceiver in

Art Unit: 2611

accordance with one of the protocols as determined by a protocol control signal from 304 and adaptive control means for accessing the selected network. Olson does not disclose the system containing capacity detection means for generating a frequency request to reassign the temporary radio spectrum. However, such a technique is common as shown by Cunningham et al. He discloses a system in which channels, or radio spectrum, is temporarily "reassigned" based in response to a maximum capacity detection. Therefore, it would have been obvious to one having ordinary skill in the art to apply this channel reassigning technique of Cunningham et al to the system of Olson for the simple purpose of acquiring a more efficient system. As to the use of a digital interface and a modem for interconnecting the transceiver with external devices, such as a facsimile device, such a technique is well known in the art and therefore would have been obvious to one of ordinary skill in the art in order to provide the user with increased versatility.

As to the protocol agile portable radio specifically changing the radio frequency modulation protocol, since Olson discloses the changing from one system "protocol" to another, then it would have been obvious to one having ordinary skill in the art to also change the modulation protocol since one would want ot properly adjust its transmission parameters for proper communication.

Art Unit: 2611

3. Claims 3, 5-8, 15 and 17-20 are rejected under 35 U.S.C. § 103 as being unpatentable over Olson in view of Cunningham et al as applied to claims 1-2, 4, 9-14, 16 and 21-22 above, and further in view of Bi et al.

Olson and Cunningham et al both discloses everything claimed as explained above except for the selection of the network based on particular factors recited in claims 3-8. However, such criteria used to select between areas are common as shown by Gillig et al. He discloses a system in which a network is selected based on the cost of the system. Therefore, it would have been obvious to one having ordinary skill in the art to apply this selection technique of Gillig et al to the modified system of Olson and Cunningham et al for the purpose of providing the user with the lowest cost available to the user. As to the other recited criteria, such factors would have been obvious to one of ordinary skill in the art since one would want to provide a system that is more flexible to the user.

4. Claims 23-24 are allowable over the prior art of record.

5. Applicant's arguments filed 5/22/95 have been fully considered but they are not deemed to be persuasive.

Applicant argues that Olson does not disclose reallocation of radio spectrum for "temporarily reassigning" radio spectrum from another network. However, such a technique is accomplished by Olson. Applicants claim, and disclosure<sup>e</sup>, ~~recite~~ the use of a

Serial Number: 08/167,002

-5-

Art Unit: 2611

device to convert from using one communication network to another using the phrase "temporarily reassigning radio spectrum". ~~While~~ Olson operates in the same manner, namely converting from one system to another by selecting and converting to appropriate "protocols" for proper communication thereby "temporarily reassigning" the use of radio spectrum from one network to another. As to the claimed invention being flexible to communicate over a number of listed systems, such an argument is deemed more in detail than the claims.

6. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Serial Number: 08/167,002


-6-

Art Unit: 2611

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Urban whose telephone number is (703) 305-4385.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-4700.

E. Urban:tlr  
September 6, 1995

  
EDWARD F. URBAN  
PRIMARY EXAMINER  
GROUP 2600